

<https://www.bop.gov/inmateloc/> (Federal Bureau of Prisons website, showing Mobley is presently confined at the FCI-Forrest City) (last accessed June 21, 2023).)

For the reasons explained below, (1) the Motion To Amend (ECF No. 17) is GRANTED; and (2) the First TRO Motion, the Second TRO Motion, and the Third TRO Motion (ECF Nos. 3, 10 & 15) are DENIED.

I. BACKGROUND

The complaint purports to invoke federal jurisdiction pursuant to 28 U.S.C. § 1331 in order to assert claims under *Bivens v. Six Unknown Fed. Agents*, 403 U.S. 388 (1971) for: unconstitutional punishment; sexual assault; sexual harassment; deprivation of grievance process; cruel and unusual punishment; retaliation; failure to train; and deprivation of due process. (ECF No. 1 at PageID 2-4; ECF No. 11 at PageID 21-38.) Mobley alleges that he asked for reassignment to segregated housing after he was threatened by gangs at the FCI-Memphis. (ECF No. 1 at PageID 2.) Mobley alleges that, after his assignment to segregated housing: (1) his phone access, law library access, visitor privileges, and privileges to move outside his cell were restricted; and (2) he was retaliated against and sexually assaulted. (*Id.* at PageID 2-3.) The complaint sues: (1) the Department of Justice; (2) the Bureau of Prisons; (3) FCI-Memphis Warden Bowers; (4) FCI-Memphis Executive Assistant Childers; (5) Special Housing Unit Officer Ewing; and (6) FCI-Memphis Counselor Bachus. (*Id.* at PageID 1-2.) Mobley sues the Defendants in their official and individual capacities. (*Id.* at PageID 4.) Mobley seeks punitive damages, pain and suffering damages, and “extreme emotional distress” damages. (*Id.* at PageID 4.)

II. THE MOTION TO AMEND

The Motion To Amend seeks to add SIA Officer H. Zabitoskey¹ as a Defendant. (ECF No. 17 at PageID 66-67.) Mobley alleges that Zabitoskey “was a major part in allowing the cl[e]arly [sic] retaliation, intimidation and threats done by Officer Ewing”, as alleged in the complaint. (*Id.* at PageID 66.) Mobley alleges that Zabitoskey “was fully aware of the ongoing retaliation [against Mobley] and did conspire with the rest of the Defendants to deliberately punish Mobley and allow retaliation.” (*Id.* at PageID 67.)

Pursuant to Fed. R. Civ. P. 15(a), a party may amend his complaint once without leave of Court prior to the filing of a responsive pleading. In the instant case: (1) the complaint has not yet been screened pursuant to the Prison Litigation Reform Act (the “PLRA”), 28 U.S.C. §§ 1915, *et seq.*; (2) no Defendant has filed a responsive pleading; (3) no Defendant has opposed the Motion To Amend; and (4) Mobley’s proposed claims against Zabitoskey arise from the initial complaint’s factual allegations. (*See* ECF No. 17 at PageID 66-67; ECF No. 1 at PageID 2-3.)

For good cause shown, the Motion To Amend (ECF No. 17) is GRANTED, to the extent Mobley seeks to amend the complaint to add SIA Officer H. Zabitoskey as a Defendant.

III. THE TRO MOTIONS

The First TRO Motion asks for Mobley to be transferred from the FCI-Memphis “to another prison” because “Mobley is daily getting threats to kill him for filing suit and reporting the unlawful actions by staff at [the] FCI-Memphis.” (ECF No. 3 at PageID 9.)

¹ The Motion To Amend spells the putative Defendant’s name interchangeably as “H. Zabitoskey” and “H. Zabitosky.” (ECF No. 17 at PageID 66-67.) For the purpose of considering the Motion To Amend, the Court refers to the putative Defendant as “H. Zabitoskey.” The Motion To Amend is construed to seek to add the same individual as a Defendant.

The Second TRO Motion asks for Mobley to be transferred “from the FCI-Memphis to any FCI with bed space availability” because “Mobley’s life is under serious threat, and retaliation has reached an all time high.” (ECF No. 10 at PageID 16.)

The Third TRO Motion asks for Mobley “to be transferred or moved from [the] FCI-Memphis” because of “the threats, retaliation, and cruel punishment inflicted on [Mobley]” after “Mobley placed [Warden] Bachus as a defendant [i]n this case.” (ECF No. 15 at PageID 56-57.)

Five (5) days after Mobley filed the Third TRO Motion, he was transferred from the FCI-Memphis to the FCI-Forrest City. (ECF No. 18 at PageID 70.)

Mobley’s requests to be transferred from the FCI-Memphis to a different correctional facility are moot. He is no longer confined at the FCI-Memphis. (*Id.*; *see also* <https://www.bop.gov/inmateloc/> (last accessed June 21, 2023).)

The First TRO Motion (ECF No. 3), the Second TRO Motion (ECF No. 10), and the Third TRO Motion (ECF No. 15) are DENIED as moot.

IT IS SO ORDERED, this 22d day of June, 2023.

/s/ Samuel H. Mays, Jr.

SAMUEL H. MAYS, JR.

UNITED STATES DISTRICT JUDGE